

#### § 1412.4

in §1412.48 for crops being grown pursuant to a contract for canning, pickling, frozen, juice, dry edible bean or pea, or such other uses deemed by CCC not to be fresh intended uses of crops mentioned in §1412.48.

*Pulse crop* means dry peas, lentils, small chickpeas, and large chickpeas. Pulse crop bases will not generate direct payments and may only create counter-cyclical payments for the 2009 and subsequent crop years.

*Replacement crop* means the planting or approved prevented planting of any crop for harvest following the failed planting or prevented planted acreage of a covered commodity or peanuts not in a recognized double-cropping sequence (as specified in this section). Replacement crops that are covered commodities or peanuts are not eligible for planted and considered planted credit under this part and cannot generate payments under this part.

*Reseeded or replanted crop* means the second planting of a covered commodity or peanut crop on the same acreage after the first planting of that same crop has failed.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Gender is not included as a covered group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives,
- (2) Asians or Asian-Americans,
- (3) Blacks or African-Americans,
- (4) Hispanics or Hispanic-Americans, and
- (5) Native Hawaiians or other Pacific Islanders.

*State ACRE guarantee* means the per acre amount for the crop which is 90 percent of the benchmark State yield times the ACRE guarantee price, subject to the minimum and maximum guarantee specified in these regulations.

*Subdivided* means land has been approved or designated by the local government, or a unit thereof, for develop-

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ment or use as something other than commercial agricultural production or other non-agricultural use.

*Supportive and necessary contractual documents* means those documents including, but not limited to, those items substantiating the DCP contract such as leases, deeds, signatures of contract participants, owners, operators, and other tenant signatures, as determined by the Secretary.

*Target price* means, for peanuts, the price per ton; and for covered commodities, the price per bushel (or other appropriate unit in the case of upland cotton, rice, and other oilseeds) used to determine the payment rate for counter-cyclical payments.

[73 FR 79289, Dec. 29, 2008, as amended at 75 FR 19191, Apr. 14, 2010]

#### § 1412.4 Appeals.

A participant may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

### Subpart B—Establishment of Base Acres for a Farm for Covered Commodities

#### § 1412.21 Election of base acres.

(a) Subject to adjustments in paragraph (b) of this section, base acres for covered commodities and peanuts are as defined in §1412.3.

(b) No later than April 1, 2009, owners on a farm may establish base acres for pulse crops.

(1) Subject to the limitations in accordance with paragraph (d) of this section and §1412.24, the base acres for pulse crops are equal to the sum of the following:

(i) The 4-year average of the acreage planted or prevented planted to the pulse crops during each of the 1998 through 2001 crop years for harvest, grazing, haying, silage, or other similar purposes, as determined by the Secretary, plus

(ii) The 4-year average of the acreage prevented from being planted to covered commodities during each of the

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1998 through 2001 crop years, for reasons beyond the control of the producer, as determined by the Deputy Administrator.

(c) Subject to paragraph (d) of this section, the total acreage of a pulse crop on the farm calculated in accordance with paragraph (b) of this section must not exceed:

(1) The total acreage of cropland on the farm minus

(2) The total acreage for all covered commodities, peanut, and other pulse crops determined in accordance with paragraphs (a) and (b) of this section.

(d) If the calculation in paragraph (c) of this section results in a negative number, the pulse crop acreage on the farm for that crop year will be zero for the purposes of determining the 4-year average, in accordance with paragraph (b) of this section. Further, no prevented planting credit or other base credit may be allowed for a pulse crop for any planting activity for which base credit was allowed or will be allowed for another commodity.

(e) If the acreage planted or prevented from being planted was devoted to a different covered commodity in the same crop year (other than a covered commodity or pulse crops produced under an established practice of double-cropping), the owner may select the commodity to be used for base purposes for that crop year in determining the 4-year average, but may not select both the initial commodity and subsequent commodity.

(f)(1) An owner may increase the eligible acres of pulse crops on a farm by reducing the acreage of covered commodities and peanuts determined in accordance with paragraphs (a) and (b) of this section for one or more covered commodities on an acre-for-acre basis, except that the total base acres for pulse crops on the farm may not exceed the four-year average of pulse crops determined under paragraph (b) of this section.

(2) For the purpose of determining a 4-year average acreage for a farm under this section, any crop year in which a pulse crop was not planted or prevented planted will be excluded.

### § 1412.22 Failure to make pulse crop election.

If an owner fails to make an election for establishing pulse crop base acres on a farm by April 1, 2009, in accordance with § 1412.21, that owner will be deemed to have made the election to determine all base acres for all covered commodities and peanuts on the farm as set forth in § 1412.21.

### § 1412.23 Base acres and Conservation Reserve Program.

(a) Subject to paragraphs (b) and (c) of this section, eligible producers may, at the beginning of each fiscal year, adjust the base acres for covered commodities and peanuts with respect to the farm by the number of production flexibility contract acres or base acres protected by a Conservation Reserve Program contract entered into under section 1231 of the Food Security Act of 1985 (1985 Farm Bill, Pub. L. 99-198) that expired, was voluntarily terminated, or was early released on or after September 30, 2007.

(b) The total base acreage on a farm must not exceed the limitation of § 1412.24.

(c) Adjustments to base acreage on a farm in accordance with this section must be completed by no later than June 1 of the fiscal year following the fiscal year the conservation reserve program contract expired or was voluntarily terminated.

(d) For the fiscal year in which an adjustment to base acres under this section is made, the owner of the farm may elect to receive either direct payments and counter-cyclical payments or ACRE payments, as applicable, with respect to the base acres added to the farm under this section or a prorated payment under the conservation reserve contract, but not both.

### § 1412.24 Limitation of total base acreage on a farm.

(a) The sum of the following must not exceed the total DCP cropland acreage on the farm, plus approved double-cropped acreage for the farm:

(1) The sum of all base acres established for the farm in accordance with this part, plus

(2) Any cropland acreage on the farm enrolled in a Conservation Reserve